

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

JOANNE HARRIS, *et al.*,

Plaintiffs,

V.

ROBERT F. McDONNELL, JANET M.
RAINEY, and THOMAS E. ROBERTS,
in their official capacities

Defendants.

Civil Action No. 5:13-cv-00077

STATE DEFENDANTS' FED. R. CIV. P. 26(a) INITIAL DISCLOSURES

COME NOW, State Defendants, Robert F. McDonnell, Governor of Virginia, and Janet M. Rainey, State Registrar of Vital Records, in their official capacities, by counsel, subject to their pending Motion to Stay, (Doc. 53), pursuant to this Court's Scheduling Order, (Doc. 43), and Fed. R. Civ. P. 26(a), and states as follows.

Virginia's definition of marriage is subject only to rational basis review on legislative facts subject to judicial notice, including but not limited to those identified in their memorandum in support of their motion for summary judgment filed in *Bostic v. Rainey*. See (No. 2:13-cv-00395, Doc. 44, 1-15, 19-21 of 38.) It is thus due to be upheld as constitutional for reasons adduced by State Defendants or identified by the Court. See *Heller v. Doe*, 509 U.S. 312, 320 (1993) (noting that laws subject to rational basis review must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (quoting *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993))); accord *Star Sci., Inc. v. Beales*, 278 F.3d 339, 350 (4th Cir. 2002) ("[E]ven if we were to reject the State's articulated purpose for enacting the statute, we would then need only determine that the legislation has some conceivable purpose that is not prohibited by the Constitution." (citing *Williamson v. Lee Optical*

of Okla., 348 U.S. 483, 487 (1955) and noting that that court "consider[ed] various purposes on which the legislature 'might' have based the legislation at issue")). Accordingly, State Defendants do not believe that their defense implicates any information required to be disclosed under Fed. R. Civ. P. 26(a)(1)(A). If the Court, over State Defendants' objections, is disposed to consider evidentiary facts and such evidentiary facts are disclosed in Plaintiffs' initial disclosures or subsequently, State Defendants reserve the right to respond in accordance with the Scheduling Order.

Respectfully Submitted,

ROBERT F. McDONNELL and
JANET M. RAINEY,
in their official capacities

By: _____/s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to counsel for all parties who are registered CM/ECF users.

/s/

E. Duncan Getchell, Jr.